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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,855	12/20/2001	Andrea Susan Wulz	16,897	1818

22827 7590 02/12/2007  
DORITY & MANNING, P.A.  
POST OFFICE BOX 1449  
GREENVILLE, SC 29602-1449

EXAMINER
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REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/026,855	WULZ ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17, 19-26, 31-34 and 36-50 is/are pending in the application.
- 4a) Of the above claim(s) 20, 22, 32, 33, 38 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17, 19, 21, 23-26, 31, 34, 36-37, 39-42 and 44-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-22-06 has been entered.

### ***Election/Restrictions***

2. Claims 20, 22, 32-33, 38, and 43 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species.

### ***Amendments to the Application***

3. As also noted in the Advisory action of 10-23-06, the amendments filed 11-22-06 still do not comply with 37 CFR 1.121. For example, with respect to claim 40, the amendments made to section d) are still not compliant. Attention is again invited to Appendix A illustrating how claims 38, 40 and 43 should have been submitted to be compliant attached to the 5-06 FINAL. Any further response should provide the appropriate corrections.

***Claim Language Interpretation***

4. The directional words are defined as set forth on page 6, lines 15-20 and last six lines. "Liquid" and "liquid communication" are defined as set forth on page 6, lines 21-25. "Multilayer laminate" is defined as set forth on page 7, line 24. "Nonwoven", "nonwoven" fabric or web, "region", "area", "spunbonded fibers" and "target area" are defined as set forth at page 8. "Vapor permeable" is defined as set forth on page 9, second full paragraph. A technique of determining WVTR value is set forth in the paragraph bridging pages 9-10. "Resilient material" is defined as set forth in the paragraph bridging pages 14-15. The terminology "above" and "underlying" have not been explicitly defined. Therefore, according to their usual, i.e. dictionary, definition, "above" is defined as "in or to a higher place" and "underlying" is defined as "to lie or be situated under", "under" is defined as "in or into a position below or beneath something", "below" is defined as "in or to a lower place" and "beneath" is "in or to a lower position, below", i.e. such claim terminology alone, i.e. without the now added modifying terminology "directly", does not require positioning directly above or directly beneath or below. "Provided for" is defined by the dictionary as "equipped to" and thereby the claim language "undulation provides for" with regard to the movement or direction of fluid is interpreted to mean that the undulation is capable of, i.e. equipped for, such movement or direction.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 17, 19, 21, 23, 26, 31, 34, 36-37, 39-42 and 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer '336 in view of Sauer '300 and Grykiewicz '785.

Claims 17, 19, 21, 26, 31, 34, 36, 37 and 39: See Sauer '336 at Figures, especially 4 and 6-7, col. 8, lines 63-65, col. 9, lines 11-20 and 48-60, col. 10, lines 21-22, 30-51, 60-67, the paragraph bridging cols. 11-12 and the first, second and fourth full paragraphs of col. 13, i.e. surfaces which slope downwardly, edges, i.e. lateral or longitudinal upper edges, which are curved, i.e. sloped downwardly, triangular profile, i.e. downwardly sloped surfaces, barriers which diverge from each other, barriers which define recesses having a depth in a direction away from the longitudinal centerline, col. 13, line 65-col. 14, line 3, i.e. the front waist section is 22, the rear waist section is 24, the intermediate section is 26, the backsheet is 32, the topsheet is 34, the absorbent body is 36, the surge management layer is 54, also see col. 9, lines 39-47, and the undulation of resilient material is 60 which is in a "target area" or zone directly above the absorbent body, see again, e.g., col. 9, lines 51-53 and col. 10, lines 30-31, and has an elevation or height above the absorbent body with downwardly sloping surfaces, see, e.g., Figure 4 again. With respect to the backsheet, see col. 6, lines 23-32 which disclose that the backsheet can be certain materials but does not set forth explicitly the WVTR claimed in claims 17 and 26. However, see col. 6, line 64-col. 7, line 35 of Sauer '300, especially lines 29-33, which disclose that the backsheet can be the same materials as that of Sauer '336 or microporous material and certain specific films. Sauer however also does not set forth explicitly the WVTR. Furthermore, see Grykiewicz '785 at col. 15, lines 17-38 which, at the very least, teach interchangeability of specific films which are the same as those taught by Sauer '300 for sheets of the claimed WVTR and, at the very most, teach those specific films have the claimed WVTR. Therefore, to make

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the backsheet of Sauer '336 a backsheet of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Sauer '300 and Gryskiewicz. With regard to the undulation of "resilient" material, see the Claim Language Interpretation section supra as well as, e.g., col. 9, lines 2-3 and col. 13, lines 48-50, it is claimed that such material is also substantially liquid impermeable. The surfaces of such undulation are also claimed as having the function or having the capability or property to direct fluids downwardly towards the absorbent body without passing such through the undulation. The element 60 is clearly described by Sauer as having sloped surfaces which are directed downwardly toward the absorbent body. It is the Examiner's first position that the material of the undulation is liquid impermeable so that liquid may not pass through the undulation since the portions cited supra, as well as col. 13, lines 55-60, describe the elements 60 as "containment barriers", "containment" is defined by the dictionary is defined as "the act or process of keeping within limits, holding back or holding down, restraining, controlling, checking or halting", "barrier" is defined by dictionary as "a material object or set of objects that separate, demarcate or serve as a barricade" and, e.g., col. 9, lines 1-2, i.e. prevents lateral flow, and col. 14, lines 25-38 of '336 (Note the language "Alternatively" in the sentence following a sentence describing barriers of foam and the alternative being absorbent materials, i.e. an alternative to nonabsorbent materials). In any case, i.e. the Examiner's second position, even if such is not deemed to be explicitly disclosed, to employ liquid impermeable resilient material on the containment barrier element of Sauer '336, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such would better contain, better act as a barrier and/or better prevent flow and the desire by Sauer '336 to do so with elements 60. In so doing, the device taught by the prior art combination

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would necessarily and inevitably perform the function, capability or property of the last section of claim 17 as now claimed, i.e. direct fluids downwardly without passing such therethrough. See also the Response to Arguments section infra.

Claim 19: See, e.g., Figure 4 and col. 10, lines 60 et seq. It is noted that claim 19 does not specifically identify where the one or more regions are located, i.e. could be any region.

Claim 21: See Figures and col. 9, lines 11-20 and 51-53.

Claim 23: See discussion supra. The term “highly breathable” is considered relative and thus, the backsheet of the prior art combination is also considered “highly breathable”.

Claim 31: See element 54, col. 5, lines 27-31 and col. 9, lines 39-47.

Claim 34: The portions of ‘336 cited supra set forth the portion of the diaper which directly receives exudates is located in the crotch region, see, e.g., col. 9, lines 13-14, and the barriers 60 define a void space which includes not only such portion but other portions as well, see, e.g., col. 9, lines 51-53, i.e. “in at least the target zone..”, and col. 13, lines 55-64, i.e. laterally extending holes or tunnels into barrier for containment, i.e. receipt, of exudates. The barriers together are also described as having a shape, e.g., diverging/converging away from the crotch region, see again the Figures and col. 8, lines 63-65, and each barrier is described as having a shape, e.g., angled and/or sinusoidal as seen in the Figures and disclosed at col. 10, lines 65 et seq, i.e. the sinusoidal recesses have a depth laterally away from the longitudinal centerline, which receives exudates/defines the void space yet maintains containment of such exudate within the side edges of the article. Therefore, the barrier/undulation taught by the prior art teaches or necessarily and inevitably “provides for”, see the Claim Language Interpretation section supra, direction of fluid away from the crotch region, e.g. from the crotch region into the

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recesses of the sinusoidal barrier and/or from the crotch region in a divergent /convergent direction and/or into the tunnels or holes therein.

Claim 36: See the discussion of claim 34 and note the specific location of “a region” in this claim has not been specifically set forth, i.e. doesn’t have to be the crotch region as set forth in claim 34, see the discussion of similar language in claim 19 supra.

Claim 37: See, e.g., col. 10, lines 65-67.

Claim 39: See, e.g., col. 14, line 29.

Claims 40-42 and 44-45: See discussion supra. With regard to claims 40-42 and 44-45, it is claimed the resilient material is liquid repellant. See also the paragraph bridging cols. 12-13 of Sauer ‘336, i.e. the elements 60 may be covered with a hydrophobic material. “Hydrophobic” is defined as “Antagonistic to, shedding, tending not to combine with or incapable of dissolving in water”, i.e. liquid repellant. Therefore, the resilient material of elements 60 is considered to be “fluid repellant”, e.g., due to their impermeability and hydrophobicity, see discussion supra.

Claims 46-50: See the discussion of the claims supra as well as the Response to Arguments section infra.

7: Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer and Gryskiewicz as applied to claim 23 above, and further in view of Odorzynski et al ‘341.

Applicant claims the backsheet of a certain WVTR also being a film/spunbond nonwoven laminate. While Sauer ‘336 at col. 6, lines 23-44 as well as the portions defined supra teach a backsheet of a film/spunbond nonwoven laminate Sauer does not teach the claimed WVTR. See the discussion of Sauer ‘336 and ‘300 and Gryskiewicz supra as well as Odorzynski ‘341 at col. 6, line 47-col. 7, line 18, i.e. interchangeability of films or treated nonwovens with



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film/spunbond nonwoven laminates of the claimed WVTR. To make the backsheet of Sauer '336 a film/spunbond nonwoven laminate of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Sauer '300, Gryskiewicz and Odorzynski et al.

### ***Response to Arguments***

8. Applicant's remarks of 11-22-06 been considered but are either deemed moot in that the issue discussed has not been reraised or are deemed not persuasive with respect to the prior art in that they are narrower than the prior art teachings (It is noted that the arguments with respect to '336 are identical to those made in the 11-9-05 response). For example, '336 clearly teaches an undulation in a target area as claimed in claims 17 and 40, see the portions cited supra. For another example, the Examiner is not modifying the prior art as argued by Applicant at the last full paragraph on page 9 with respect to claim 46, i.e. the arguments are narrower than the rejection. With further regard to the arguments with respect to claim 46, it is again noted that the barriers as a whole can, e.g., have a diverging configuration, the edges of each barrier at the upper surface, i.e. the edges include longitudinal edges, can be, e.g., rounded off, and/or the recessed configurations/tunnels which have recesses with a depth away from the longitudinal centerline, i.e. all such features "provide for" direction or movement of fluid away from the center of the article yet maintain fluid within the article, i.e. its side edges. It is noted that claims 34, 36, 41-42 and 46 do not define the dimensions of the sections, including the intermediate or crotch section, with regard to overall composite.

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*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art '908 and '197 show undulations of liquid impermeable material, i.e. the transverse tubular portions, between the topsheet and absorbent core. '150 shows an undulation between the topsheet and absorbent core.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*K. M. Reichle*  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
February 1, 2007